

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MANASA THIMMEGOWDA, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

BIG FISH GAMES, INC., a Washington
corporation; ARISTOCRAT TECHNOLOGIES
INC., a Nevada corporation; ARISTOCRAT
LEISURE LIMITED, an Australian corporation;
and CHURCHILL DOWNS INCORPORATED,
a Kentucky corporation,

Defendants.

NO.

CLASS ACTION COMPLAINT

JURY DEMAND

Plaintiff Manasa Thimmegowda brings this case, individually and on behalf of all others similarly situated, against Defendants, Big Fish Games, Inc. (“Big Fish”), Aristocrat Technologies Inc. and Aristocrat Leisure Limited (“Aristocrat”), and Churchill Downs Incorporated (“Churchill Downs”) (collectively, “Defendants”) to enjoin and obtain redress for Defendants’ operation of illegal online casino games. Plaintiff alleges as follows:

I. NATURE OF THE ACTION

1. Defendants are the current owners and operators of “Big Fish Casino” as well as other similar internet casino games that compete in the so-called “social casino” market.

1 2. The Ninth Circuit recently held that Big Fish Casino “constitutes illegal
2 gambling under Washington law.” *Kater v. Churchill Downs Inc.*, 886 F.3d 784, 785 (9th Cir.
3 2018).

4 3. Insofar as the *Kater* case seeks relief from Big Fish Casino’s *prior* owner and
5 operator, on behalf of individuals who began playing Big Fish Casino before a certain date, this
6 case—which additionally seeks redress from the *current* ownership and operation, and does so
7 on behalf of individuals that began playing Big Fish Casino and other similar games after that
8 certain date—is essentially a companion case that fills in any gaps left by *Kater*.

9 4. Through “Big Fish Casino” and other similar internet casinos, Defendants offer
10 a multitude of electronic slot machine and other internet casino games to consumers.
11 Consumers play Big Fish Casino and Defendants’ other casino games on Apple iOS devices,
12 Android Devices, and Facebook.

13 5. Defendants provide a bundle of free “chips” to first-time visitors of their online
14 casinos that can be used to wager on their games. After consumers inevitably lose their initial
15 allotment of chips, Defendants attempt to sell them additional chips. Without additional chips,
16 consumers cannot play Defendants’ gambling games.

17 6. Freshly topped off with additional chips, consumers wager to win more chips.
18 The chips won by consumers playing Defendants’ games of chance are identical to the chips
19 that it sells. Thus, by wagering chips that consumers purchase, consumers have the chance to
20 win additional chips that they would otherwise have to purchase.

21 7. By operating Big Fish Casino and other similar online gambling games,
22 Defendants have violated Washington law and illegally profited from tens of thousands of
23 consumers. Accordingly, Plaintiff, on behalf of herself and a Class of similarly situated

1 individuals, brings this lawsuit to recover her losses and to obtain other appropriate relief.

2 **II. PARTIES**

3 8. Plaintiff Manasa Thimmegowda is a natural person who is domiciled in the state
4 of Florida.

5 9. Defendant Big Fish Games, Inc., is a corporation organized and existing under
6 the laws of Washington, with its principal place of business at 906 Alaskan Way, Suite 700,
7 Seattle Washington 98104. Big Fish Games, Inc. conducts business throughout this District,
8 Washington State, and the United States.

9 10. Defendant Aristocrat Technologies, Inc., is a corporation organized and existing
10 under the laws of Nevada, with its principal place of business at 7230 Amigo Street Las Vegas,
11 NV 89119 United States. Aristocrat Technologies, Inc. conducts business throughout this
12 District, Washington State, and the United States.

13 11. Defendant Aristocrat Leisure Limited is a corporation organized and existing
14 under the laws of Australia, with its principal place of business at Building A, Pinnacle Office
15 Park, 85 Epping Road, North Ryde NSW 3113, Australia. Aristocrat conducts business
16 throughout this District, Washington State, and the United States.

17 12. Defendant Churchill Downs Incorporated is a corporation incorporated under
18 the laws of the state of Kentucky with a principal place of business at 600 N. Hurstbourne
19 Parkway Suite 400 Louisville, KY 40222. Churchill Downs has conducted business throughout
20 this District, Washington State, and the United States.

21 **III. JURISDICTION AND VENUE**

22 13. Federal subject-matter jurisdiction exists under 28 U.S.C. § 1332(d)(2) because
23 (a) at least one member of the Class is a citizen of a state different from Defendants, (b) the

1 amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and (c) none of the
2 exceptions under that subsection apply to this action.

3 14. The Court has personal jurisdiction over Defendants because Defendants
4 conduct significant business transactions in this District, and because the wrongful conduct
5 occurred in and emanated from this District.

6 15. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial
7 part of the events giving rise to Plaintiff's claims occurred in this District.

8 IV. FACTUAL ALLEGATIONS

9 A. Free-to-Play and the New Era of Online Gambling

10 16. The proliferation of internet-connected mobile devices has led to the growth of
11 what are known in the industry as "free-to-play" videogames. The term is a misnomer. It refers
12 to a model by which the initial download of the game is free, but companies reap huge profits
13 by selling thousands of "in-app" items that start at \$0.99 but can quickly escalate to hundreds
14 or even thousands of dollars.

15 17. The in-app purchase model has become particularly attractive to developers of
16 games of chance (*e.g.*, poker, blackjack, and slot machine mobile videogames, amongst others),
17 because it allows them to generate huge profits. In 2017, free-to-play games of chance
18 generated over \$3.8 billion in worldwide revenue, and they are expected to grow by ten percent
19 annually.¹ Even "large land-based casino operators are looking at this new space" for "a
20 healthy growth potential."²

21 ¹ GGRAsia – Social casino games 2017 revenue to rise 7pct plus says report,
22 <http://www.ggrasia.com/social-casino-games-2017-revenue-to-rise-7pct-plus-says-report/> (last visited February
23 11, 2019)

² *Report confirms that social casino games have hit the jackpot with \$1.6B in revenue* | GamesBeat,
<https://venturebeat.com/2012/09/11/report-confirms-that-social-casino-games-have-hit-the-jackpot-with-1-6b-in-revenue/> (last visited February 11, 2019)

1 18. With games of chance that employ the in-game purchase strategy, developers
2 have begun exploiting the same psychological triggers as casino operators. As one respected
3 videogame publication put it:

4 “If you hand someone a closed box full of promised goodies, many will happily
5 pay you for the crowbar to crack it open. The tremendous power of small
6 random packs of goodies has long been known to the creators of physical
7 collectible card games and companies that made football stickers a decade ago.
8 For some ... the allure of a closed box full of goodies is too powerful to resist.
9 Whatever the worth of the randomised [sic] prizes inside, the offer of a free
10 chest and the option to buy a key will make a small fortune out of these
11 personalities. For those that like to gamble, these crates often offer a small
12 chance of an ultra-rare item.”³

13 19. Another stated:

14 “Games may influence ‘feelings of pleasure and reward,’ but this is an
15 addiction to the games themselves; micro-transactions play to a different kind of
16 addiction that has existed long before video games existed, more specifically, an
17 addiction similar to that which you could develop in casinos and betting shops.”⁴

18 20. The comparison to casinos doesn’t end there. Just as with casino operators,
19 mobile game developers rely on a small portion of their players to provide the majority of their
20 profits. These “whales,” as they’re known in casino parlance, account for just “0.15% of
21 players” but provide “over 50% of mobile game revenue.”⁵

22 21. Game Informer, another respected videogame magazine, reported on the rise
23 (and danger) of micro-transactions in mobile games and concluded:

 “[M]any new mobile and social titles target small, susceptible populations for
large percentages of their revenue. If ninety-five people all play a [free-to-play]
game without spending money, but five people each pour \$100 or more in to
obtain virtual currency, the designer can break even. These five individuals are
what the industry calls whales, and we tend not to be too concerned with how

³ PC Gamer, *Microtransactions: the good, the bad and the ugly*,
<http://www.pcgamer.com/microtransactions-the-good-the-bad-and-the-ugly/> (last visited Feb. 11, 2019).

⁴ The Badger, *Are micro-transactions ruining video games?* | *The Badger*,
<http://thebadgeronline.com/2014/11/micro-transactions-ruining-video-games/> (last visited Feb. 11, 2019).

⁵ *Id.* (emphasis added).

1 they're being used in the equation. While the scale and potential financial ruin is
2 of a different magnitude, a similar profitability model governs casino
gambling.”⁶

3 22. Academics have also studied the socioeconomic effect games that rely on in-app
4 purchases have on consumers. In one study, the authors compiled several sources analyzing so-
5 called free-to-play games of chance (called “casino” games below) and stated that:

6 “[Researchers] found that [free-to-play] casino gamers share many similar
7 sociodemographic characteristics (e.g., employment, education, income) with
8 online gamblers. Given these similarities, it is perhaps not surprising that a strong
9 predictor of online gambling is engagement in [free-to-play] casino games.
Putting a dark line under these findings, over half (58.3%) of disordered gamblers
who were seeking treatment stated that social casino games were their first
experiences with gambling.”

10 ...

11 “According to [another study], the purchase of virtual credits or virtual items
12 makes the activity of [free-to-play] casino gaming more similar to gambling.
13 Thus, micro-transactions may be a crucial predictor in the migration to online
14 gambling, as these players have now crossed a line by paying to engage in these
15 activities. Although, [sic] only 1–5% of [free-to-play] casino gamers make
16 micro-transactions, those who purchase virtual credits spend an average of \$78.
Despite the limited numbers of social casino gamers purchasing virtual credits,
revenues from micro-transactions account for 60 % of all [free-to-play] casino
gaming revenue. Thus, a significant amount of revenue is based on players’
desire to purchase virtual credits above and beyond what is provided to the
player in seed credits.”⁷

17 23. The same authors looked at the link between playing free-to-play games of
18 chance and gambling in casinos. They stated that “prior research indicated that winning large
19 sums of virtual credits on social casino gaming sites was a key reason for [consumers’]

20 ⁶ Game Informer, *How Microtransactions Are Bad For Gaming - Features* - www.GameInformer.com,
21 [http://www.gameinformer.com/b/features/archive/2012/09/12/how-microtransactions-are-bad-for-](http://www.gameinformer.com/b/features/archive/2012/09/12/how-microtransactions-are-bad-for-gaming.aspx?CommentPosted=true&PageIndex=3)
gaming.aspx?CommentPosted=true&PageIndex=3 (last visited February 11, 2019)

22 ⁷ Hyoun S. Kim, Michael J. A. Wohl, *et al.*, *Do Social Casino Gamers Migrate to Online Gambling? An*
23 *Assessment of Migration Rate and Potential Predictors*, Journal of gambling studies / co-sponsored by the
National Council on Problem Gambling and Institute for the Study of Gambling and Commercial Gaming (Nov.
14, 2014), available at <http://link.springer.com/content/pdf/10.1007%2Fs10899-014-9511-0.pdf> (citations
omitted).

1 migration to online gambling,” yet the largest predictor that a consumer will transition to online
 2 gambling was “micro-transaction engagement.” In fact, “the odds of migration to online
 3 gambling were approximately *eight times greater* among people who made micro-transactions
 4 on [free-to-play] casino games compared to [free-to-play] casino gamers who did not make
 5 micro-transactions.”⁸

6 24. The similarity between micro-transaction based games of chance and games of
 7 chance found in casinos has caused governments across the world to intervene to limit their
 8 availability.⁹ Unfortunately, such games have eluded regulation in the United States. As a
 9 result, and as described below, Defendants’ online gambling games have thrived and thousands
 10 of consumers have spent millions of dollars unwittingly playing Defendants’ unlawful games of
 11 chance.

12 **B. A Brief Introduction to Big Fish and Aristocrat**

13 25. Big Fish is a developer of slot machine-based “Social Casino” games. Its
 14 marquee product is Big Fish Casino. On information and belief, Big Fish Casino drives annual
 15 revenues in excess of \$100 million, and Big Fish’s overall “social casino” portfolio drives
 16 annual revenues in excess of \$200 million.

17 26. Big Fish and its founders have reaped substantial profits through a series of
 18 mergers and acquisitions by some of the largest gambling companies in the world.

19 27. For example, in 2014, Churchill Downs, Inc.—of Kentucky Derby fame—

20 ⁸ *Id.* (emphasis added).

21 ⁹ In late August 2014, South Korea began regulating “social gambling” games, including games similar to
 22 Defendants’, by “ban[ning] all financial transactions directed” to the games. PokerNews.com, *Korea Shuts Down*
 23 *All Facebook Games In Attempt To Regulate Social Gambling* | *PokerNews*,
<https://www.pokernews.com/news/2014/09/korea-shuts-down-facebook-games-19204.htm> (last visited Feb. 11,
 2019). Similarly, “the Maltese Lotteries and Gambling Authority (LGA) invited the national Parliament to regulate
 all digital games with prizes by the end of 2014.” *Id.*

1 purchased Big Fish for approximately \$885 million.¹⁰

2 28. Defendant Aristocrat Leisure is a multinational corporation that primarily
3 manufacture slot machines. It is headquartered in Australia but has employees in 103 different
4 countries.

5 29. In 2018, Aristocrat purchased Big Fish from Churchill Downs for approximately
6 \$990 million.¹¹

7 **C. Consumers Do Not Consent To Any Terms Of Service Before Playing Big Fish**

8 30. Consumers can play Big Fish Casino and its various slot machines and casino
9 games—as well as Defendants’ other social casino games—by downloading Big Fish’s app on
10 an Apple iOS device, on an Android device, or by playing the online casino games on
11 Facebook.

12 **1. Mobile App Users**

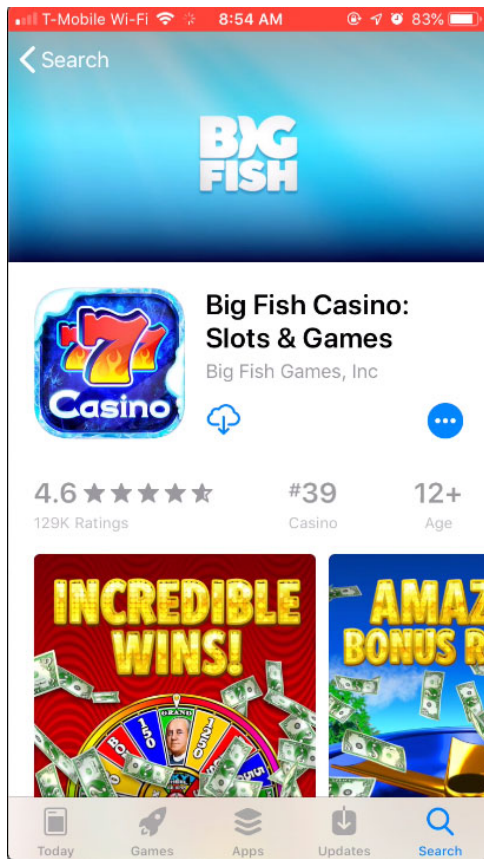
13 31. As is—for whatever reason—standard practice in the “Social Casino” industry,
14 consumers who download the Big Fish Casino app and then purchase chips on their mobile
15 devices are neither required to create an account with Big Fish nor asked to agree to or consent
16 to any terms of service before playing Big Fish games.

17 32. For example, Apple iOS users navigate to the App Store to download the Big
18 Fish Casino mobile app. They are never presented with terms of any kind before downloading
19 the app. *See Figure 1.*

20
21 ¹⁰ *Big Fish Games to be acquired for \$885 million by racetrack operator Churchill Downs* – GeekWire,
<http://www.geekwire.com/2014/churchill-downs-acquires-big-fish/> (last visited Feb. 11, 2019).

22 ¹¹ *Churchill Downs Incorporated Announces Closing of the Sale of Big Fish Games, Inc. to Aristocrat*
23 *Technologies, Inc. for US\$990 million*, Churchill Downs, Inc., <https://globenewswire.com/news-release/2018/01/09/1286371/0/en/Churchill-Downs-Incorporated-Announces-Closing-of-the-Sale-of-Big-Fish-Games-Inc-to-Aristocrat-Technologies-Inc-for-US-990-million.html> (last visited Feb. 11, 2019).

(Figure 1.)



(Figure 2.)



33. When a consumer launches the Big Fish mobile app, they are first presented with a loading screen while the player connects to Big Fish's servers. *See Figure 2.*

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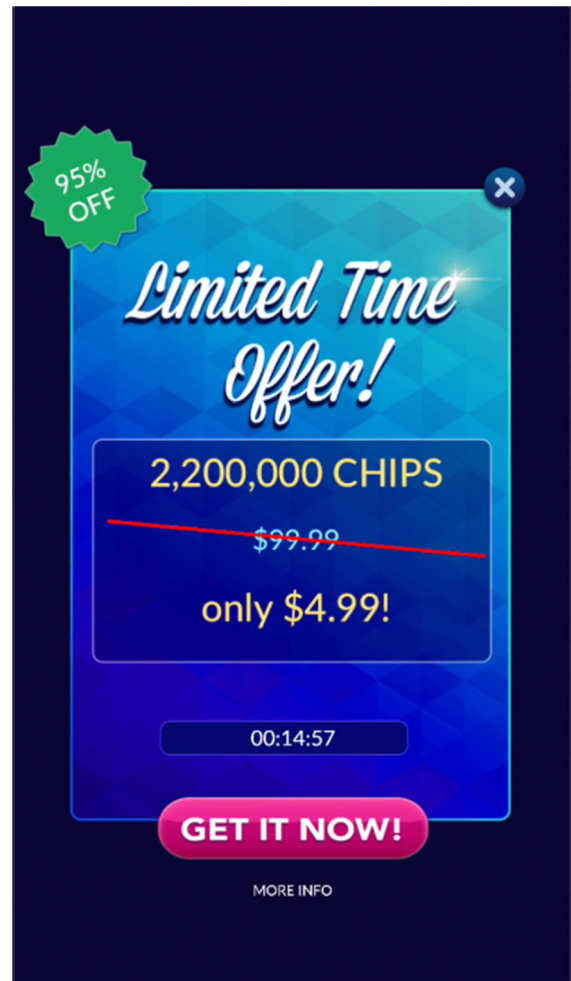
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(Figure 3.)



(Figure 4.)



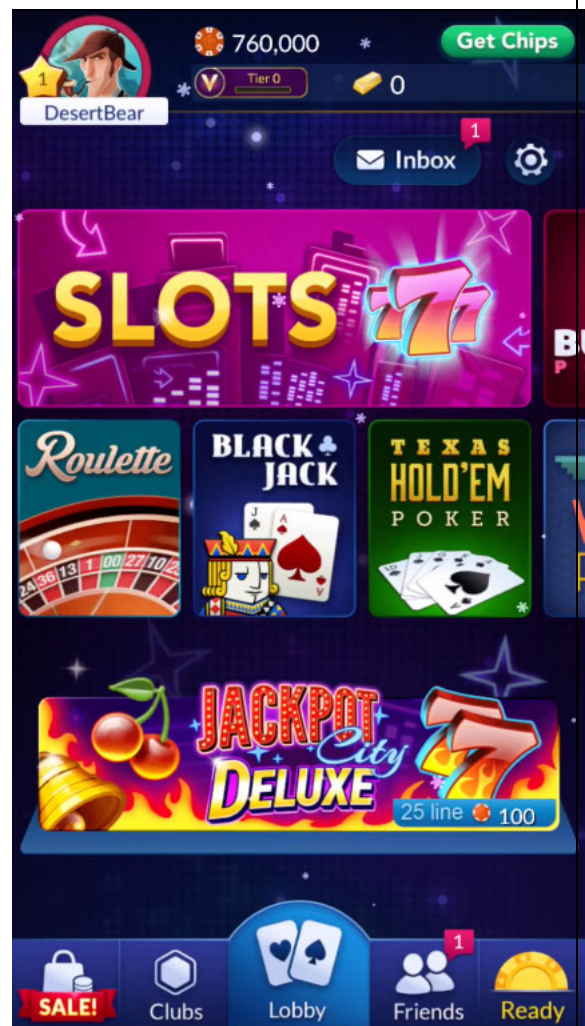
34. Big Fish first offers consumers an allotment of free chips through one “Daily Spin” and a “Return Bonus,” as shown in Figure 3. Then, Big Fish presents consumers with various offers to purchase chips with real money at a discount. (Figures 4-5). As shown in Figure 4 above, Big Fish announces a “Limited Time Offer!” for “95% Off” a 2,200,000 chip package for “only \$4.99.”

35. Consumers can either accept Big Fish’s offers to purchase discounted chips or they can dismiss these offers and play Big Fish’s casino games, as shown in Figure 6.

(Figure 5.)



(Figure 6.)



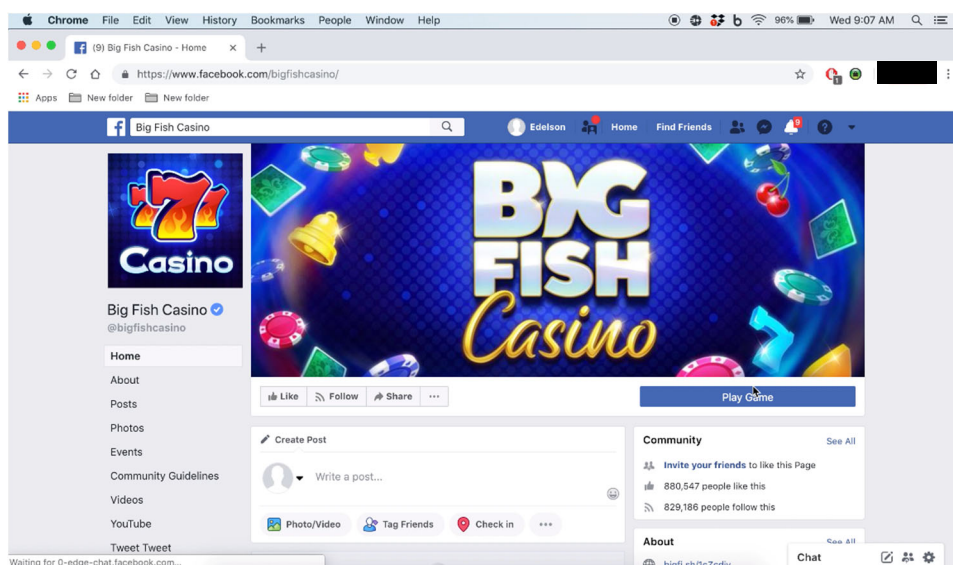
36. Consumers are never asked to consent to Big Fish's terms before playing these games or before paying real money for Defendants' virtual casino chips.

2. Facebook Users

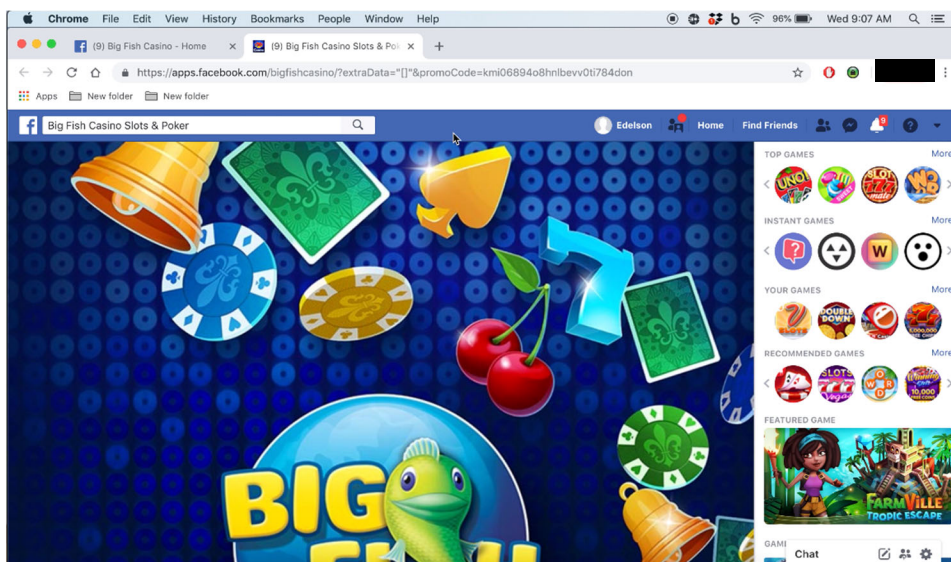
37. Consumers can also play Big Fish's casino games via Facebook. Like with Big Fish's mobile version, and consistent with the rest of the "social casino industry," Facebook-based Big Fish Casino players are neither required to create an account with Big Fish to play its

various casino games or to purchase chips, nor are they asked to consent to Big Fish's terms.

38. Consumers first login to their Facebook account and upon searching for and clicking to play Big Fish Casino are redirected to Big Fish's games without ever having been presented with any terms of service. *See Figures 7-8.*

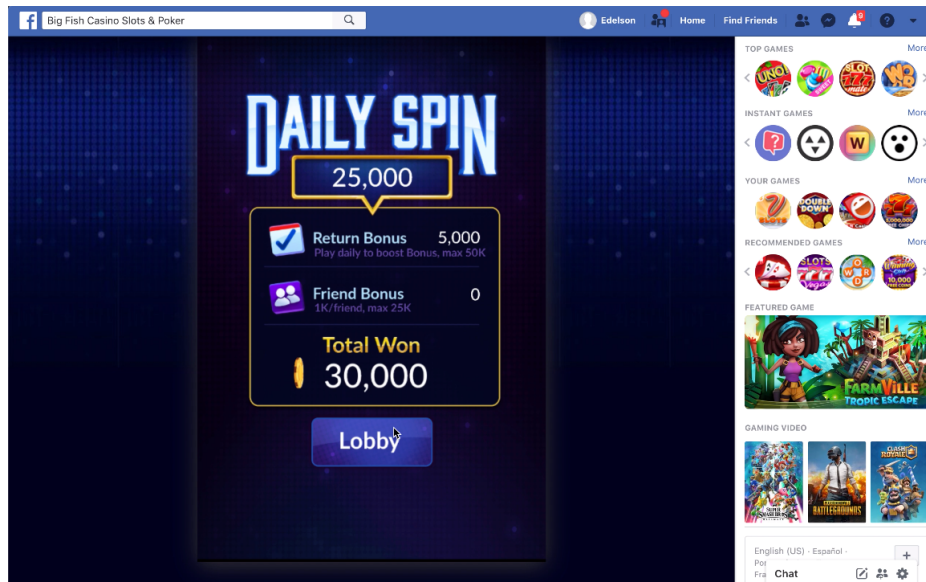


(Figure 7, partially redacted for privacy)



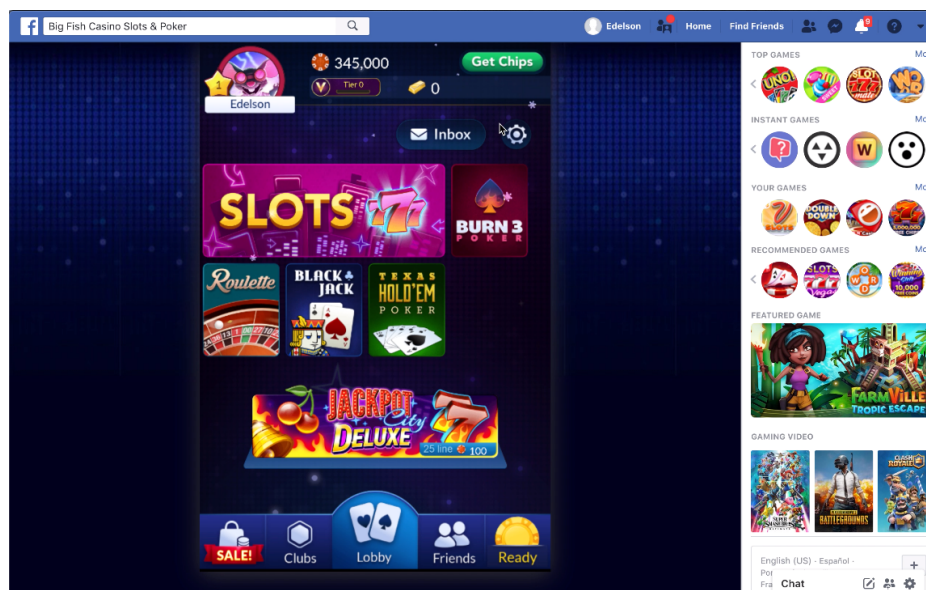
(Figure 8, partially redacted for privacy)

39. Once the consumer connects to Big Fish's game servers, Big Fish offers an allotment of free chips through a "Return Bonus" and one "Daily Spin." See Figure 9.



(Figure 9, partially redacted for privacy)

40. Finally, the consumer can play Big Fish's casino games by selecting one of its many slot machines. See Figure 10.



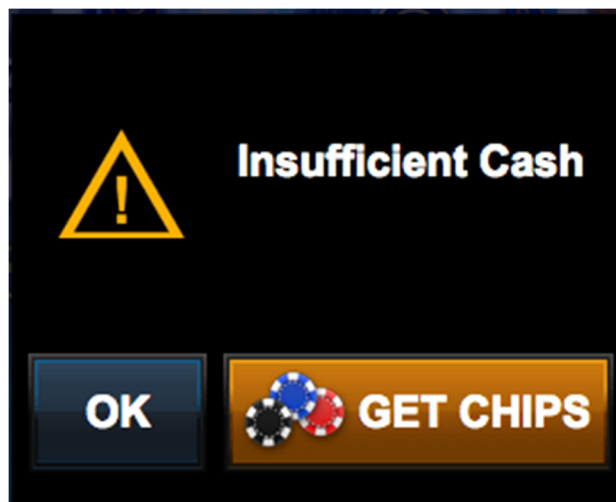
(Figure 10, partially redacted for privacy)

41. Consumers are never asked to consent to Big Fish's terms before playing these games or before paying real money for Defendants' virtual casino chips.

D. Defendants' Online Casinos Contains Unlawful Games of Chance

42. Consumers visiting Defendants' online casinos for the first time are awarded free chips. These free sample chips offer a taste of gambling and are designed to encourage players to get hooked and buy more chips for real money.

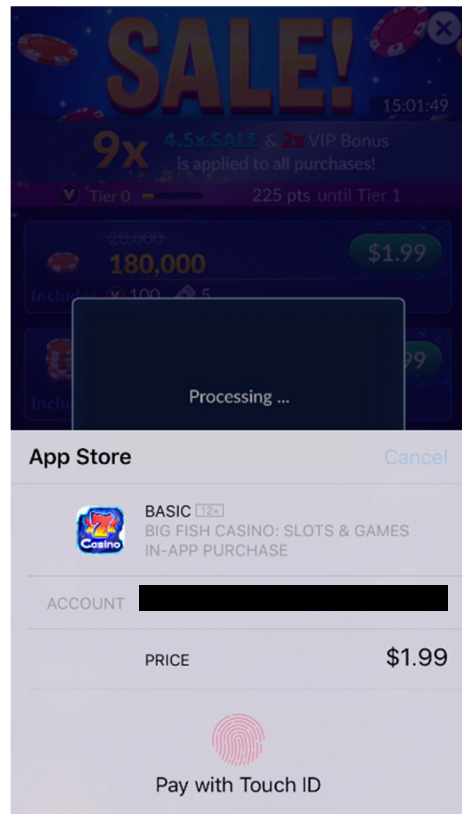
43. After they begin playing, consumers quickly lose their initial allotment of chips. Immediately thereafter, Big Fish informs them via a "pop up" screen that they have "Insufficient Cash" to place a wager, which prevents them from additional play. *See Figure 11.*



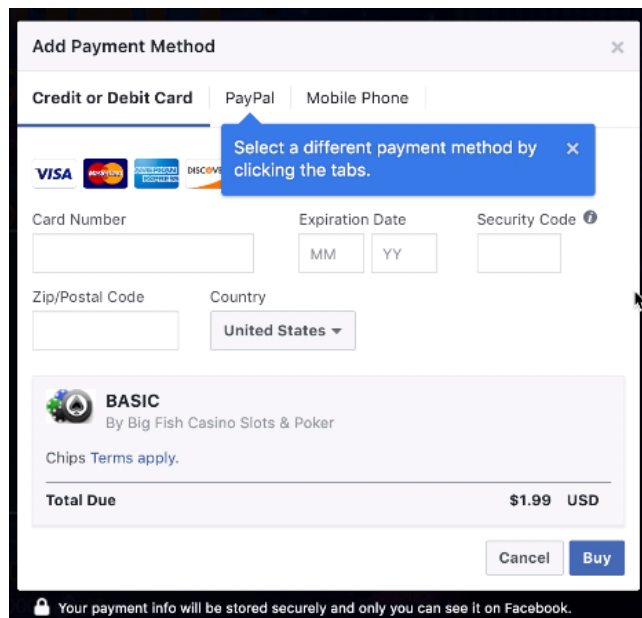
(**Figure 11**, showing Big Fish's mobile application.)

44. Concurrently with that warning, Big Fish provides a link to consumers, telling them to "GET CHIPS" at the electronic store where the price for chips ranges from prices of \$1 to at least \$999.99. Big Fish's offer to purchase chips with real money is substantially the same on its mobile app and on Facebook. Once players run out of their allotment of free chips, they cannot continue to play the game without buying more chips for real money.

45. Even during the check-out process when consumers purchase chips with real money, Big Fish does not show consumers its Terms. See Figures 12-13.



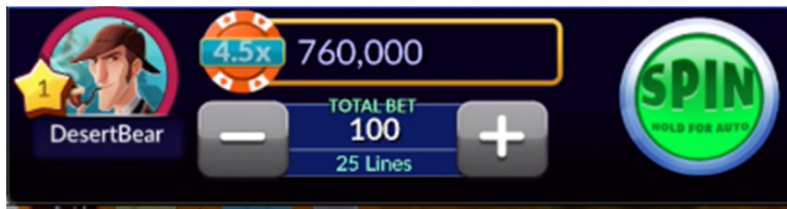
(**Figure 12**, the chip purchase page on iOS, partially redacted for privacy.)



(**Figure 13**, showing the chip purchase page on Facebook.)

46. When purchasing chips via Facebook, the consumer is presented with a link only to Facebook's terms, in Facebook's capacity as the transaction processor. The consumer is not presented with terms for Big Fish Casino or Big Fish Games.

47. To begin wagering, players select the "BET" that will be used for a spin, as illustrated in Figure 14, which shows one of Defendants' slot machine games in Big Fish Casino. Big Fish allows players to increase or decrease the amount he or she can wager and ultimately win (or lose).



(**Figure 14.**)

48. Once a consumer spins the slot machine by pressing the "SPIN" button, no action on his or her part is required. Indeed, none of Defendants' online casino games allow (or call for) any additional user action. Instead, the consumer's computer or mobile device communicates with and sends information (such as the "BET" amount) to Big Fish's servers. Big Fish's servers then execute the game's algorithms that determine the spin's outcome.

49. Consumers can continue playing with the chips that they won, or they can exit the game and return at a later time to play because Big Fish maintains win and loss records and balances for each consumer. Indeed, once Big Fish's algorithms determine the outcome of a spin and Big Fish displays the outcome to the consumer, Big Fish adjusts the consumer's balance. Big Fish keeps records of each wager, outcome, win, and loss for every player.

V. FACTS SPECIFIC TO PLAINTIFF

50. In approximately November 2017, Plaintiff began playing Big Fish Casino on her Apple iOS device. Within three months of playing Big Fish Casino for the first time, Plaintiff began regularly paying real money to purchase virtual chips in Big Fish Casino.

51. Thereafter, Plaintiff continued playing various slot machines and other games of chance within Defendants' casino where she would wager purchased chips for the chance of winning additional chips.

52. Between November 2017 and December 2018, Plaintiff wagered and lost (and Defendants therefore won) over \$3,000 at Defendants' games of chance.

VI. CLASS ALLEGATIONS

53. **Class Definitions:** Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3) on behalf of a Class of similarly situated individuals, defined as follows:

Class: All persons in the United States who began playing Big Fish Casino or other similar Big Fish Games "casino games" on or after March 24, 2015, and lost purchased chips by wagering at Defendants' casino games.

The following people are excluded from the Class: (1) any Judge or Magistrate Judge presiding over this action and members of their families; (2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or their parents have a controlling interest and their current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

1 54. **Numerosity:** On information and belief, tens of thousands of consumers fall into
 2 the definition of the Class. Members of the Class can be identified through Defendants'
 3 records, discovery, and other third-party sources.

4 55. **Commonality and Predominance:** There are many questions of law and fact
 5 common to Plaintiff's and the Class' claims, and those questions predominate over any
 6 questions that may affect individual members of the Class. Common questions for the Class
 7 include, but are not necessarily limited to the following:

- 8 a. Whether Defendants' online casino games are "gambling" as defined by RCW §
 9 9.46.0237;
- 10 b. Whether Defendants are the proprietors for whose benefit the online casino
 11 games are played;
- 12 c. Whether Plaintiff and each member of the Class lost money or anything of value
 13 by gambling;
- 14 d. Whether Defendants violated the Washington Consumer Protection Act, RCW §
 15 19.86.010, *et seq.*; and
- 16 e. Whether Defendants have been unjustly enriched as a result of its conduct.

17 56. **Typicality:** Plaintiff's claims are typical of the claims of other members of the
 18 Class in that Plaintiff's and the members of the Class sustained damages arising out of
 19 Defendants' wrongful conduct.

20 57. **Adequate Representation:** Plaintiff will fairly and adequately represent and
 21 protect the interests of the Class and has retained counsel competent and experienced in
 22 complex litigation and Class actions. Plaintiff's claims are representative of the claims of the
 23 other members of the Class, as Plaintiff and each member of the Class lost money playing

1 Defendants' games of chance. Plaintiff also has no interests antagonistic to those of the Class,
2 and Defendants have no defenses unique to Plaintiff. Plaintiff and her counsel are committed to
3 vigorously prosecuting this action on behalf of the Class and have the financial resources to do
4 so. Neither Plaintiff nor her counsel have any interest adverse to the Class.

5 **58. Policies Generally Applicable to the Class:** This Class action is appropriate for
6 certification because Defendants have acted or refused to act on grounds generally applicable to
7 the Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure
8 compatible standards of conduct toward the members of the Class and making final injunctive
9 relief appropriate with respect to the Class as a whole. Defendants' policies that Plaintiff
10 challenges apply and affect members of the Class uniformly, and Plaintiff's challenge of these
11 policies hinges on Defendants' conduct with respect to the Class as a whole, not on facts or law
12 applicable only to Plaintiff. The factual and legal bases of Defendants' liability to Plaintiff and
13 to the other members of the Class are the same.

14 **59. Superiority:** This case is also appropriate for certification because Class
15 proceedings are superior to all other available methods for the fair and efficient adjudication of
16 this controversy. The harm suffered by the individual members of the Class is likely to have
17 been relatively small compared to the burden and expense of prosecuting individual actions to
18 redress Defendants' wrongful conduct. Absent a Class action, it would be difficult for the
19 individual members of the Class to obtain effective relief from Defendants. Even if members of
20 the Class themselves could sustain such individual litigation, it would not be preferable to a
21 Class action because individual litigation would increase the delay and expense to all parties
22 and the Court and require duplicative consideration of the legal and factual issues presented. By
23 contrast, a Class action presents far fewer management difficulties and provides the benefits of

1 single adjudication, economy of scale, and comprehensive supervision by a single Court.
 2 Economies of time, effort, and expense will be fostered and uniformity of decisions will be
 3 ensured.

4 60. Plaintiff reserves the right to revise the foregoing “Class Allegations” and
 5 “Class Definition” based on facts learned through additional investigation and in discovery.

6 **VII. FIRST CAUSE OF ACTION**
 7 **Violations of Revised Code of Washington § 4.24.070**
 8 **(On behalf of Plaintiff and the Class)**

9 61. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

10 62. Plaintiff, members of the Class, and Defendants are all “persons” as defined by
 11 RCW § 9.46.0289.

12 63. Washington’s “Recovery of money lost at gambling” statute, RCW 4.24.070,
 13 provides that “all persons losing money or anything of value at or on any illegal gambling
 14 games shall have a cause of action to recover from the dealer or player winning, or from the
 15 proprietor for whose benefit such game was played or dealt, or such money or things of value
 16 won, the amount of the money or the value of the thing so lost.”

17 64. “Gambling,” defined by RCW § 9.46.0237, “means staking or risking something
 18 of value upon the outcome of a contest of chance or a future contingent event not under the
 19 person's control or influence.”

20 65. Defendants’ “chips” sold for use in its online gambling games are “thing[s] of
 21 value” under RCW § 9.46.0285.

22 66. Defendants’ online gambling games are illegal gambling games because they are
 23 online games at which players wager things of value (the chips) and by an element of chance

1 (e.g., by spinning an online slot machine) are able to obtain additional entertainment and extend
2 gameplay (by winning additional chips).

3 67. Defendants are the proprietors for whose benefit the online gambling games are
4 played because they own the online gambling games and operate those games for their own
5 profit.

6 68. Plaintiff and the Class gambled when they purchased chips to wager at
7 Defendants' online gambling games. Plaintiff and each member of the Class staked money, in
8 the form of chips purchased with money, at Defendants' games of chance (e.g., Defendants'
9 slot machines) for the chance of winning additional things of value (e.g., chips that extend
10 gameplay without additional charge).

11 69. In addition, Defendants' online gambling games are not "pinball machine[s] or
12 similar mechanical amusement device[s]" as contemplated by the statute because:

- 13 a. the games are electronic rather than mechanical;
- 14 b. the games confer replays but they are recorded and can be redeemed on
15 separate occasions (*i.e.*, they are not "immediate and unrecorded"); and
- 16 c. the games contain electronic mechanisms that vary the chance of
17 winning free games or the number of free games which may be won (e.g., the
18 games allow for different wager amounts).

19 70. RCW § 9.46.0285 states that a "'Thing of value,' as used in this chapter, means
20 any money or property, any token, object or article exchangeable for money or property, or any
21 form of credit or promise, directly or indirectly, contemplating transfer of money or property or
22 of any interest therein, or involving extension of a service, entertainment or a privilege of
23 playing at a game or scheme without charge."

1 71. The “chips” Plaintiff and members of the Class had the chance of winning in
2 Defendants’ online gambling games are “thing[s] of value” under Washington law because they
3 are credits that involve the extension of entertainment and a privilege of playing a game
4 without charge.

5 72. Defendants’ online gambling games are “Contest[s] of chance,” as defined by
6 RCW § 9.46.0225, because they are “contest[s], game[s], gaming scheme[s], or gaming
7 device[s] in which the outcome[s] depend[] in a material degree upon an element of chance,
8 notwithstanding that skill of the contestants may also be a factor therein.” Defendants’ online
9 gambling games are programmed to have outcomes that are determined entirely upon chance
10 and a contestant’s skill does not affect the outcomes.

11 73. RCW § 9.46.0201 defines “Amusement game[s]” as games where “The outcome
12 depends in a material degree upon the skill of the contestant,” amongst other requirements.
13 Defendants’ online gambling games are not “Amusement game[s]” because their outcomes are
14 dependent entirely upon chance and not upon the skill of the player and because the games are
15 “contest[s] of chance,” as defined by RCW § 9.46.0225.

16 74. As a direct and proximate result of Defendants’ gambling game, Plaintiff and
17 each member of the Class have lost money wagering at Defendants’ games of chance. Plaintiff,
18 on behalf of herself and the Class, seeks an order (1) requiring Defendants to cease the
19 operation of its gambling games; and/or (2) awarding the recovery of all lost monies, interest,
20 and reasonable attorneys’ fees, expenses, and costs to the extent allowable.

VIII. SECOND CAUSE OF ACTION

Violations of the Washington Consumer Protection Act, RCW § 19.86.010, *et seq.* (On behalf of Plaintiff and the Class)

75. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

76. Washington’s Consumer Protection Act, RCW § 19.86.010 *et seq.* (“CPA”), protects both consumers and competitors by promoting fair competition in commercial markets for goods and services.

77. To achieve that goal, the CPA prohibits any person from using “unfair methods of competition or unfair or deceptive acts or practices in the conduct of any trade or commerce. . . .” RCW § 19.86.020.

78. The CPA states that “a claimant may establish that the act or practice is injurious to the public interest because it . . . Violates a statute that contains a specific legislative declaration of public interest impact.”

79. Defendants violated RCW § 9.46.010, *et seq.* which declares that:

“The public policy of the state of Washington on gambling is to keep the criminal element out of gambling and to promote the social welfare of the people by limiting the nature and scope of gambling activities and by strict regulation and control.

It is hereby declared to be the policy of the legislature, recognizing the close relationship between professional gambling and organized crime, to restrain all persons from seeking profit from professional gambling activities in this state; to restrain all persons from patronizing such professional gambling activities; to safeguard the public against the evils induced by common gamblers and common gambling houses engaged in professional gambling; and at the same time, both to preserve the freedom of the press and to avoid restricting participation by individuals in activities and social pastimes, which activities and social pastimes are more for amusement rather than for profit, do not maliciously affect the public, and do not breach the peace.”

80. Defendants have violated RCW § 9.46.010, *et seq.*, because its Defendants’ online games are illegal online gambling games.

1 81. Defendants' wrongful conduct occurred in the conduct of trade or commerce—
2 *i.e.*, while Defendants were engaged in the operation of making computer games available to
3 the public.

4 82. Defendants' acts and practices were and are injurious to the public interest
5 because Defendants, in the course of their business, continuously advertised to and solicited the
6 general public in Washington State and throughout the United States to play their unlawful
7 online gambling games of chance. This was part of a pattern or generalized course of conduct
8 on the part of Defendants, and many consumers have been adversely affected by Defendants'
9 conduct and the public is at risk.

10 83. Defendants have profited immensely from their operation of unlawful games of
11 chance, amassing hundreds of millions of dollars from the losers of their games of chance.

12 84. As a result of Defendants' conduct, Plaintiff and the Class members were
13 injured in their business or property—*i.e.*, economic injury—in that they lost money wagering
14 on Defendants' unlawful games of chance.

15 85. Defendants' unfair or deceptive conduct proximately caused Plaintiff's and the
16 Class members' injuries because, but for the challenged conduct, Plaintiff and the Class
17 members would not have lost money wagering at or on Defendants' games of chance, and they
18 did so as a direct, foreseeable, and planned consequence of that conduct.

19 86. Plaintiff, on her own behalf and on behalf of the Class, seeks to enjoin further
20 violation and recover actual damages and treble damages, together with the costs of suit,
21 including reasonable attorneys' fees.

22 **IX. THIRD CAUSE OF ACTION**
23 **Unjust Enrichment**
 (On behalf of Plaintiff and the Class)

- 1 d. Enjoining Defendants from continuing the challenged conduct;
- 2 e. Awarding damages to Plaintiff and the Class members in an amount to be
- 3 determined at trial, including trebling and/or punitive damages as appropriate;
- 4 f. Awarding restitution to Plaintiff and Class members in an amount to be
- 5 determined at trial, and requiring disgorgement of all benefits that Defendants unjustly
- 6 received;
- 7 g. Awarding reasonable attorney's fees and expenses;
- 8 h. Awarding pre- and post-judgment interest, to the extent allowable;
- 9 i. Entering judgment for injunctive and/or declaratory relief as necessary to protect
- 10 the interests of Plaintiff and the Class; and
- 11 j. Awarding such other and further relief as equity and justice require.

11 **XI. JURY DEMAND**

12 Plaintiff requests a trial by jury of all claims that can be so tried.

13 Respectfully submitted this 11th day of February, 2019.

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**Pro hac vice* admission to be sought.

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